IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10443 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSUKHBHAI JAGJIVANBHAI PATEL

Versus

CHIEF SECRETARY (APPEALS)

Appearance:

1. Special Civil Application No. 10443 of 2004

MS KJ BRAHMBHATT for Petitioner No. 1

MS VARSHA BRAHMBHATT for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 29/11/2004

ORAL JUDGEMENT

As the notice was issued for final disposal of the matter, matter is finally heard today.

2. Heard Ms.Brahmbhatt for the petitioner and Mr.Desai, Ld.AGP for the respondent authorities.

3. The petitioner has preferred this petition challenging the order passed by the Collector and its confirmation thereof by the State Govt whereby the entry in favour of the petitioner on the basis of the registered sale deed is cancelled on the ground that the transaction is in breach of provisions of Prevention of Fragmentation Act (hereinafter referred to as "the Fragmentation Act").

4. Upon hearing the learned advocates for the parties, it appears that there is no dispute on the point that the issue involved in this petition is the same which was considered by this court in the matter of Jayantilal Jethalal Soni vs State of Gujarat and others (Spl.C.A.No.12547/04) which has been decided on 28.9.04. In the said decision at paras 7,8 & 9 it has been observed as under:

"7. It appears that if a registered sale deed is executed by the holder of the land it confers the right pertaining to the land in question in favour of the petitioner of the land, and therefore, the rights pertaining to the land in question in normal circumstances can be said to have been acquired over the land in question for which recording is required to be made in the revenue record. It is also well settled that the revenue entries are having value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it is neither confers any right or title over the property nor does it take away the right or title over the property which otherwise can not be available under the law. However, the question which arises for the consideration is if a sale deed is executed by the holder of the land which runs primafacie counter to the other statutory provisions of other enactment or is barred under the other enactment or it alters or disturbs the rights of the persons under the other enactment then can the revenue authority shut its eyes by ignoring such flagrant violation of such law or if it is considered what will be proper course to be followed. In case of Evergreen Apartment

Coop.Housing Society (supra) this court has expressed the view that it is not open to the revenue authority exercising power under the code to exercise power under the other enactment and to decide in respect to the breaches which are committed under the other enactment and thereby to uncertify the entry or to cancel the entry made in the revenue record. In case of "Janardhan D.Patel vs State of Gujarat"(supra) at para 11 it has been observed as under:

"If any such question arises the matter should be referred to the authority empowered to deal with under the said other enactment. For example, the validity of a transaction on the basis of section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief)is sought to be challenged that question can not be decided by revenue authorities in RTS proceedings. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the Tenancy Act for his decision. The necessary decision of that authority under the Tenancy Act is received, it would however not be open to the revenue authorities in RTS proceedings to decide that question.

8. Therefore, keeping in view of the aforesaid observations made by this court in the above referred judgment it appears that it would not be proper to hold that even if there are breaches under other enactments or such transfer is barred under the other enactments, the revenue authorities exercising power under the Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising the power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority primafacie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to resulting into adversely affecting the rights under the other enactments and consequently sale is prohibited then in that case the appropriate course for the revenue

authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is primafacie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to final decision which may be taken by the competent authority under the other concerned enactment. This court is inclined to take such view because the one who may be bonafide purchaser or the one who is interested to purchase the property would normally rely upon the revenue entry for inquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry on the basis of the sale deed is not at all effected with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it can not be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even primafacie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising the power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not.

9. In view of the above, it can not be said that the orders passed by all the authorities on the basis that the Mamalatdar has not inquired

into the aforesaid three aspects, namely, as to whether there is any breach of the provisions of the Prevention of Fragmentatiion Act or the provisions of the Tenancy Act are absolutely without any basis and the orders can be maintained only to the extent that in case it is found by the Mamalatdar after remand that there are primafacie breach of other enactment by the transfer in question the revenue authority exercising power under the code may refer the matter to the appropriate authority under the other enactment or may relegate the affected party to resort to appropriate proceedings under the other enactment and the entry may be considered subject to the final outcome in the proceedings under the other enactment as observed hereinabove in earlier paragraphs."

5. Therefore, in view of the above, the orders passed by the authorities cancelling the entry in toto can not be maintained and the Entry No.5067, dated 30.7.1981 on the basis or registered sale deed shall continue to remain on revenue record with the primafacie observations that the transaction is in breach of provisions of Fragmentation Act and it would be open to the authority to make reference to the competent authority under Fragmentation Act. If such an action is taken under Fragmentation Act it would be open to the petitioner to raise all the contentions including the contention that there is unreasonable delay in initiating the action. The entry shall continue to remain in the revenue record subject to final decision, if any, which may be taken by the competent authority under Fragmentation Act

6. Petition is allowed to the aforesaid extent. Rule is partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.

29.11.2004 (JAYANT PATEL,J)